



Testimony of
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On behalf of the

American Association of
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Hazardous Materials Endorsement Background Checks

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Good Afternoon, Chairman and distinguished Members of the House Select Highway, Transit and Pipelines Subcommittee. My name is D.B. Smit and I am the Commissioner of the Virginia Department of Motor Vehicles. I also serve as both Treasurer and Chair of the Government Affairs Committee for the American Association of Motor Vehicle Administrators (AAMVA). Thank you for the opportunity to testify on behalf of AAMVA to discuss successes and concerns regarding implementation of the hazardous materials endorsement (HME) background record checks (BRC) program with the Transportation Security Administration (TSA).

AAMVA is a state-based, non-profit association representing motor vehicle agency administrators, senior law enforcement officials and industry in the United States and Canada. Our members are the recognized experts who administer the laws governing motor vehicle operation, driver credentialing, and highway safety enforcement. AAMVA plays an integral role in the development, deployment and monitoring of both the commercial driver's license (CDL) and motor carrier safety programs. The Association's members are responsible for administering these programs at the state and provincial levels. As a non-regulatory organization, AAMVA uses membership expertise to develop standards, specifications and best practices to foster the enhancement of driver licensing administration

Background

When Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism also known as the USA PATRIOT Act (P.L. 107-56). Section 1012 required that background record checks be performed on CDL holders with HMEs. State driver licensing agencies and AAMVA then quickly got to work on the following tasks:

- Delivering data regarding existing CDL drivers with hazardous materials endorsements to federal agencies, who then in turn applied that data to various databases and search algorithms with the intent of identifying any drivers whom that they felt posed a security risk to the country. This project was termed "Name-based Background Checks".

The Federal Bureau of Investigation (FBI), Federal Motor Carrier Safety Administration (FMCSA) and TSA all requested identification data (name, birth date, Social Security Number, and other identifiers) on existing CDL/HME drivers from the states since September 11, 2001. AAMVA, the Operator of CDLIS on behalf of FMCSA, served as the focal point for those requests, and from the states' perspective, this process was successful. AAMVA has limited visibility to the end result of those checks. The FBI and TSA would be in the best position to answer questions about drivers that were identified using this process.

- Defining criteria, processes, and procedures for the “fingerprint-based background checks” needed for new applicants, renewal applicants and transfers. For this part of the effort, TSA and the states needed to determine how to:
 - Capture, store and transmit data that is not currently handled by state driver licensing agencies (the Data Capture Process)
 - Receive and administer responses from TSA regarding the eligibility of a driver to receive the endorsement (the Eligibility Process)
 - Capture, store and transfer data regarding the results of the background check to other states when the driver changed state of residence (the History Process)

This fingerprint-based background checks project has been fraught with problems since the outset. The states view the problems to be caused by the lack of focus, continuity, and decision making on the part of TSA. After working with TSA for three years, the agency still lacks a solid understanding of the state driver licensing environment and what it takes to get things done. TSA has not viewed the state driver licensing agencies and its advocate, AAMVA, as a partner in the planning and execution of this portion of the effort and the program has suffered greatly as a result.

Working Relationships with Federal Agencies

In October 2002, AAMVA began to work with FMCSA, which was originally assigned responsibility within the Department of Transportation (DOT), to implement the HME background record check.¹ In 2003, responsibility of the program was transferred to TSA which at the time was in DOT and later moved to the Department of Homeland Security. In April 2003, AAMVA began to work with TSA to start implementing the HME background record check program. TSA, FMCSA and the former Research Special Programs Administration (RSPA) issued interim final rules on May 3, 2003.

In November 2004 and January 2005, TSA issued more interim final rules on the process and on the fees that could be collected at the time of application.

Throughout the course of this effort, AAMVA senior management has met several times with TSA senior management. These meetings were always at the request of AAMVA and were prompted by concerns voiced by the AAMVA membership regarding the lack of focus and decision making on the part of TSA. AAMVA’s message in these meetings was consistent:

- TSA needs to involve the state driver licensing agencies in the planning and execution of the program; and
- TSA needs to make decisions more quickly in order to make deadlines.

¹ Appendix I, AAMVA USA PATRIOT Act Timeline, April 2005.

These meetings seemed to have some short-term, positive impact on progress; however we believe that the high rate of personnel turnover and the competing demands within TSA for resources caused the CDL/HME program to repeatedly lose focus within TSA. In the two years since TSA assumed responsibility for this program, AAMVA and the states have worked with five different TSA project managers.

AAMVA's CDL/HME Working Group

In July 2003, AAMVA put together a USA PATRIOT Working Group, which consists of AAMVA, state motor vehicle agencies², TSA, FMCSA, FBI, Lexis Nexis and CJIS (the FBI's Criminal Justice Information Systems Division). This working group has provided expert advice to TSA about whether the requirements for the HME program are obtainable and how requirements should change in order for motor vehicle agencies to implement the HME program.

AAMVA would like to thank the agency for addressing some of the issues identified by the PATRIOT Act Working Group which resulted in further amendments to the regulations. Based on comments from state motor vehicle agencies, TSA decided to do a phased implementation so DMVs would not be burdened all at one time. TSA changed the 180-day notification of drivers to 60 days and separated the name based check from the fingerprint based background check. TSA also decided to require CDL holders, instead of the states, to notify the agency of disqualifying crimes. Additionally, TSA changed the rule to allow HME background record checks to transfer from state to state if within the five-year expiration. Otherwise, CDL holders would have to get new HMEs BRCs if they moved to another state. Another significant change is that TSA is notifying drivers of whether they passed the security threat assessment. In the beginning, the state motor vehicle agencies had the responsibility to notify the driver and with this change, DMVs will not bear an administrative burden.

Key Operational and Implementation Concerns

The following were three key elements to the fingerprint-based background check program:

- Capture, store and transmit data that is not currently handled by state driver licensing agencies (the Data Capture Process).
- Receive and administer responses from TSA regarding the eligibility of a driver to receive the endorsement (the Eligibility Process).
- Capture, store and transfer data regarding the results of the background check to other states when the driver changed state of residence (the History Process).

² States on the AAMVA Patriot Act Working Group are: Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Maryland, Montana, Ohio, Pennsylvania and Texas.

For the Data Capture Process, states could choose to use an agent, provided by TSA, to capture, store, and transmit the data to TSA, or the state could capture, store and transmit the data itself. States that chose to capture the data on their own anticipated that they would transfer the data to TSA via the Commercial Driver License Information System (CDLIS). AAMVA and the states are still awaiting a decision and commitment by TSA on that request.

For the Eligibility Process and the History Process, the states also anticipated that TSA and the states would use CDLIS as the mechanism for delivering the data. AAMVA and the states are still awaiting a decision by TSA on that request.

There were identified in TSA rulemaking three deadlines with respect to the program:

- January 31, 2005 – Fingerprint-based checks for first time applicants
- May 31, 2005 – Fingerprint-based checks for renewal and transfer applicants
- July 31, 2005 – For those states that chose to implement the Data Capture Process themselves, they must use an automated process to exchange the data with TSA by this date.

All states met the January 31, 2005 deadline; however, TSA and the states are using what all agree is an interim process to do so. Currently, the HME background record check program is conducted through manual processes: fax, telephone and email. This manual process is burdensome and expensive for both TSA and the states, but because of the relatively small numbers of new applicants, this process has been manageable. However, there problems exist with matching up the threat assessment disposition returned from TSA with the driver's application in the state and with the timeliness of the response from TSA. For example, Florida has submitted 2,179 applications since January 31, 2005 and has only received 735 responses back.

The May 31 deadline is a concern for the state driver licensing agencies. The current interim process, if expanded to include renewal and transfer applicants, will cause applications for renewals to be mired in manual effort at TSA and in the states and will ultimately impede commerce.

With respect to the July deadline, the states have asked that CDLIS be used pursuant to all previous design discussions. However, TSA has not committed to CDLIS' use in this project and, moreover, TSA would have had to make that decision last year in order for the states' systems and the CDLIS central site to be modified in time for July, 2005. Since that decision has yet to be made by TSA, modification to has not started to support the Data Capture Process.

TSA Needs to Better Understand Driver Licensing

There are many examples we could use to underscore the fact that TSA does not understand the driver licensing environment and has not worked closely enough with state driver licensing agencies. However there is one situation that shows it best.

For those states using the TSA agent, TSA decided to change the commercial driver's license number when it is being collected by the agent. The agency made this decision without telling the state driver licensing agencies. Driver license number is THE key element to tie an individual to a driver license. All state driver license databases use this number as the primary identifier for drivers.

TSA's decision has huge consequences and therefore states like Texas and Montana cannot readily match the security threat assessment to the CDL driver with an endorsement. Also, states such as Georgia have been getting threat assessment determinations regarding drivers not holding CDLs, therefore there is no way to match the security threat assessment to a CDL.

The CDL/HME program will never be successful if TSA continues its decision making in a vacuum.

Additional State Concerns

- State motor vehicle agencies and AAMVA are concerned about the lack of funding for state implementation and expedition. California stated to AAMVA that the interim process is very costly to California, and as such, feel it is necessary that CDLIS be the long-term method used to transmit the data from TSA to DMV and for CDLIS to be used to transmit the HME information from California to other States.
- TSA and FMCSA regulations appear to be in conflict regarding whether person's with certain immigration classifications can receive a HME.
- States have petitioned TSA to incorporate information kept in state criminal history repositories into the CDL/HME background check. TSA has decided not to consider this information. States are concerned about language contained in the Senate's version of the highway bill allowing the Department of Homeland Security to preempt a state's decision to deny a HME based on information contained in the state criminal history repositories.
- States who decided not to use the TSA agent, such as Illinois with 95,000 CDL/HME holders, feel that they are treated as a low priority for TSA when it comes to resolving problems.
- States that use the TSA agent such as California, Ohio, Minnesota and Alaska have stated that there are not enough locations throughout their state to service their CDL holders/HME population, some locations are not accessible to commercial vehicles and are hours of operations are too limited.
- TSA should be change the fee regulation to allow the states who use the TSA agent, such as Maryland, recoup costs incurred by the state to process the threat determination.

TSA needs to work with the state motor vehicle agencies to address these issues.

Solutions for Success

AAMVA and the state motor vehicle agencies stand ready to assist TSA and continue to commit resources to help further refine the process. AAMVA recommends the following to improve the process.

1. ***Apply the model of communication used by USDOT/FMCSA as a proven and effective process to ensure the right people and organizations within the jurisdictions can contribute to the success of the program.*** In addition to using its own communications plan, FMCSA's strategy is to use AAMVA's existing infrastructure to communicate with the people across the nation responsible for implementing and operating the CDL program.
2. ***Allow the states to determine how to integrate these new requirements into their existing business and technical programs for the long-term solution (i.e., through CDLIS) and give them the funding and time to do so.*** States are clear in their preference to use CDLIS because it causes a tight integration of the application for an HME with the corresponding disposition returned from TSA. Congress should require TSA to use CDLIS. This approach will take longer to implement but will be the most cost effective and will stand the test of time.
3. ***Limit the fingerprint-based background check to new CDL/HME applicants until the CDLIS solution is ready.*** Renewal and transfer CDL/HME holders have been run through the name-based check several times since September 11, 2001. There is little risk in waiting until the CDLIS solution is ready.

Conclusion

TSA's interim processes, when accurately implemented and fully tested, meet the requirements of the USA PATRIOT Act. There is no increased risk in terms of threat to the homeland by continuing these procedures beyond July 2005. All parties must have the opportunity to take the time necessary to implement what will undoubtedly be the most efficient and cost effective long-term solution.

Thank you. I've concluded my testimony and welcome any questions from the subcommittee.

Appendix 1

USA PATRIOT Act Timeline

September 11, 2001

Terrorists attacked United States.

October 2001

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 25, 2001. Section 1012 established requirement for background record checks (BRCs) on Commercial Driver License (CDL) holders with HAZMAT endorsements (HMEs).

AAMVA collected batch data from the 51 licensing agencies in response to the FBI's request for the data. Approximately 3.5 million records were collected. This number is high because the states also included some licenses that had already expired.

November 19, 2001

Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration (TSA). TSA was created as an Agency within the Department of Transportation (DOT).

October and November 2002

AAMVA began to work with the Federal Motor Carrier Safety Administration (FMCSA), originally assigned responsibility within DOT to implement the USA PATRIOT Act. AAMVA, FMCSA and Lexis/Nexis (FMCSA's contractor) met twice in October (9th and 10th) and once in November (6th) to discuss roles, responsibilities, initial design options and implementation strategy. On October 17, 2002, AAMVA sent Lexis/Nexis (L/N) a high-level overview of the CDLIS solution. On November 6, 2002 AAMVA met directly with L/N Program Manager to discuss open issues.

March 2003

TSA became an agency of the Department of Homeland Security (DHS) on May 1, 2003.

AAMVA collected batch data from the 51 licensing agencies in response to the FBI's second request for the data.

April 2003

TSA held first meetings with AAMVA and TSA's Contractor Lexis/Nexis (contract turned over from FMCSA).

On April 7, 2003, AAMVA briefs TSA Assistant Administrator for Transportation Security Policy Tom Blank and Director for Maritime, Land and Cargo Policy Elaine Degenski.

May 2003

TSA, FMCSA and RSPA issued joint Interim Final Rules (IFRs) on May 5, 2003: Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License. The following are requirements that were originally defined by TSA in this rule, but were later changed via additional rulemakings:

- Implementation deadline: November 3, 2003
- TSA to begin name-based BRCs on existing CDL holders with HMEs
- Immigration/Citizenship requirements
- 180-day advance notification from state to CDL holder
- Driver must start BRC process no later than 90-days before expiration of endorsement
- List of disqualifying crimes
- Appeal and waiver process
- Self-disclosure of disqualifying crimes by CDL holder to State
- BRC results and therefore HME are not transferable to a new state
- Data collected from the applicant
- Application must advise the individual that TSA will provide a copy of the criminal history record upon written request
- Initial determination of threat goes to both driver and state
- State required to notify driver of determinations of 'no security threat'
- Costs of implementing rule
- States have 15 days from receipt of determination to issue CDL with HME
- TSA may issue 'withdrawal of initial notification' to driver and 'no security threat' to state after 'initial notification' of threat
- Successful appeals result in a specific notification to the state and driver

TSA and AAMVA met on May 2, 2003 and May 3, 2003 to discuss the project.

July 2003

AAMVA established USA PATRIOT Act Task Force to develop products to assist the jurisdictions with meeting the requirements for the November 3, 2003 deadline, such as a model HME application form and letters.

TSA established Application Working Group (WG) whose role is to develop the data element requirements for the batch file for Phase 1 (name-based) BRCs. LN and AAMVA worked together to develop the requirements using existing CDL data element standards and other national standards. WG meets in July and August.

AAMVA sent TSA information necessary to establish network connectivity.

July 2003 through December 2004

TSA established regularly scheduled HME Screening Gateway (HMESG) status meetings. AAMVA attended meetings regularly.

August 2003

AAMVA and LN submitted the Phase 1 name-based batch file layout to TSA for approval. The file layout will be used to collect data from the 2.7 million existing CDL holders with HMEs.

October 2003

On October 3, 2003 legislation (DHS Appropriations Act, 2004) enacted authorizes DHS to collect fees to cover the costs of implementing section 1012.

TSA established regularly scheduled HMESG technical committee meetings (TCM). Meetings continued through January 2005. Now that the Phase 1 batch format has been submitted for approval, AAMVA requested to begin work on Phase 2 (fingerprint based BRCs). TSA is focused on Phase 1 and does not put resources into the Phase 2 effort. AAMVA advised TSA that it takes at least 2 months to develop the specifications once the requirements are fully defined and up to 6 weeks for the review process to be completed. Once specifications are developed, they are sent to the AAMVA community.

The community provides feedback to AAMVA on how long it will take to implement the changes. Detailed project plans are developed. AAMVA can't start programming, update the UNI software or develop acceptance and structured test plans until specifications have been finalized and frozen. The states cannot start analysis and design without finalized specifications.

November 7, 2003

TSA issued Interim Final Rule. The following are requirements that were originally defined by TSA in the May 3, 2003 rule, but were changed via this rule:

- Implementation deadline: changed from November 3, 2003 to April 1, 2004, allows for request for extension to December 1, 2004 (note that states were not notified of the change in deadline until publication of this rule that was after the November 3, 2003 deadline)
- TSA establishes deadline of December 2004 for it to complete name-based BRCs on existing CDL holders to mitigate risk
- Indicates future rulemaking will define critical implementation requirements of minimum federal standards for fingerprint collection, criminal history adjudication, appeal process and potential costs

January 2004

TSA provided feedback on Phase 1 batch file format submitted for review in August 2003.

February 2004

AAMVA sent notices to 51 licensing agencies for the collection of Phase 1 CDL data.

February 2004 through May 2004

AAMVA collected 2.7 million records from 51 licensing agencies for the Phase 1 named-based BRCs. AAMVA requested, received, reviewed and validated test files from the states. The states must successfully pass the testing phase before AAMVA requests a production run against their actual CDL files. AAMVA reviewed production files against specifications and transmits the data to TSA for processing. Records that contain errors were returned to AAMVA who works directly with the state to fix the problem and resubmit the data. This process is repeated until all 2.7 million records are collected. AAMVA provided TSA with weekly updates that showed the dates the states sent the test files, when they passed the testing phase, the date AAMVA received production files, the number of records received and comments on the process.

April 2004

On April 6, 2004 TSA issues a Final Rule, which changed the implementation date from April 1, 2004 to January 31, 2005

AAMVA met with Administrator Stone and Executive Staff on April 14, 2004 to discuss four general categories of state DMV concerns:

- **Not all requirements are known.** This is causing inactivity on behalf of most states because they don't want to expend resources until they know what they need to do. States that are trying to implement something are taking risks by assuming that what they are doing will eventually be acceptable by TSA.
- **Funding mechanisms are not in place.** Many states can't use the federal authority that TSA has to establish and use new fees. They need state legislation to do so. Therefore, they have no way to fund the start-up and operational costs of the program. No federal grants are available to offset the inability of states to establish user fees quickly.
- **The dates for implementation are unrealistic for the majority of the states.** Since states are waiting for the requirements to be finalized before they engage their resources, even the January 2005 date is not going to be met.
- **There is complete buy-in that the state DMV's need to help with homeland security, however there is not widespread belief that implementing fingerprint based background checks on HAZMAT drivers is as valuable as other efforts would be to deter terrorism.** Many believe that a terrorist would just hijack a truck of gasoline as opposed to going through the process of obtaining a CDL with a HAZMAT endorsement.

AAMVA held USA PATRIOT Act Working Group Meetings

- Bi-weekly meetings from April 2004 through August 2004, Weekly meetings during September 2004 and October 2004, Bi-weekly meetings December 2004 to present (April 2005), scheduled through at least July 2005.
- For the first several months, TSA attendance is sporadic. After many requests, TSA assigns a staff liaison to the WG.
- AAMVA held almost daily meetings with TSA during October and November 2004 to work through the most pressing open issues.

TSA sent a request to state Governors to request a HAZMAT point of contact (POC). TSA developed a list of HAZMAT POCs, through which all project correspondence flows. Many of the contacts were not

within the departments responsible for implementing the Act. States frequently complained to both TSA and AAMVA that this communications plan is not effective. AAMVA communicated this to TSA as well and offers to help distribute materials to the AAMVA community. TSA decided to continue communications plan through HAZMAT POCs.

June 2004

After months of requests from AAMVA to start work on Phase 2, TSA held a kick-off meeting on June 9, 2004 with AAMVA and Lexis/Nexis. AAMVA reminded TSA that it takes at least 2 months to develop the specifications once the requirements are fully defined and up to 6 weeks for the review process to be completed. Once specifications are developed, they are sent to the AAMVA community. The community provides feedback to AAMVA on how long it will take to implement the changes. Detailed project plans are developed. AAMVA can't start programming, update the UNI software or develop acceptance and structured test plans until specifications have been finalized and frozen. Based on AAMVA's experience implementing changes to CDLIS, AAMVA told TSA that there are always some states that can't make the implementation date. TSA asks AAMVA which states won't make the USA PATRIOT Act implementation date. AAMVA informs TSA that we can't predict that.

To assist TSA in its development of cost estimates, AAMVA gathered statistical and anecdotal trend analysis from the states on new CDL issuances with HMEs, renewals, transfers and upgrades (adding an HME to an existing CDL).

TSA puts out RFI for fingerprint services.

July 2004

AAMVA offered 2-hour CDLIS 101 training to USA PATRIOT Act WG and TSA. TSA does not attend training.

TSA publishes its findings that 29 "people of interest" had their HMEs revoked as a result of the 2.7 million name-based BRCs.

August 2004

TSA released fingerprint specification through HAZMAT POCs. When AAMVA held the next USA PATRIOT Act WG meeting, several of the states in attendance were unaware that TSA has released the specification.

FMCSA issued companion rule on August 8, 2004 to change compliance date to agree with TSA's new date of January 31, 2005.

AAMVA assists TSA as they request a new file of the CDL holders with HMEs that have been added to the state database since the first file was requested by TSA in February 2004.

September 2004

AAMVA met with Administrator Stone on September 20, 2004 to discuss existing issues with the program. AAMVA continued to stress that the requirements must be fully defined and frozen. AAMVA can't develop a detailed project plan to estimate the project end date.

October 2004

AAMVA provided TSA with a consolidated list of the business and technical issues and questions that still remain open.

On October 22, 2004 AAMVA issued CDLIS USA PATRIOT Act Data Definitions Document. This document provided the states with the final data element requirements for the HME Application and the Threat Determination Response.

November 10, 2004

TSA issued its Fee NPRM. The rulemaking identified the fee options and established procedures for fee collection.

TSA also issued an Exemption from 49 CFR §1572.5(c)(2)(i), issuance of renewal and transfer HMEs. Under this exemption, processing of security threat assessments for transfer and renewal HMEs may begin March 31, 2005 and becomes effective on May 31, 2005. The effective date of January 31, 2005 remains the same for new HMEs.

November 24, 2004

TSA issued IFR. The following are requirements that were originally defined by TSA in previous rules, but were changed via this rule:

- Section 1572.105 (a) (3) of the rule (69 FR 226, page 68720) allows a broader range of non-citizens to apply for a HAZMAT endorsement including lawful nonimmigrants, refugees and asylees. This conflicts with FMCSA regulations 49 CFR Section 383.71 (a) (9), which clearly states that jurisdictions must require applicants for an HME to provide proof of their citizenship or that they are a lawful permanent resident by presenting documents enumerated in Table 1 of that section. In January 2005, FMCSA issues an interpretation consistent with earlier USA PATRIOT Act rulemaking and current regulations. FMCSA determined that lawful nonimmigrants, refugees and asylees are not permanent residents of the U.S. Their alien status is indefinite and can be cancelled at any time. Since U.S. citizens and lawful permanent resident aliens are the only persons that can be lawfully domiciled in the U.S. and qualify for a CDL, lawful nonimmigrants, refugees and asylees are not eligible for an HME or a CDL. FMCSA is in the process of developing formal interpretations on this issue. TSA will not issue a clarification to point out that although they are qualified to get the BRC under TSA's rules, they cannot be issued a CDL with an HME under FMCSA's rules.
- Finalizes the list of disqualifying crimes
- Increases response time for appeals and waivers
- Allows states to transfer BRCs and therefore HMEs
- Allows extensions of HME expiration dates up to 90 days
- Requires states to make a declaration of their intent to use the TSA Agent
- If states will not be ready to transmit data via CDLIS by July 2005, they are instructed to consider using the TSA Agent

December 2004

TSA held national conference calls with the states on December 2, 2005 and December 3, 2005 to introduce the TSA Agent and Agent process. The timing conflicted with AAMVA's previously scheduled CDL Coordinators meeting. AAMVA's USA PATRIOT Act Program Manager attended TSA's meeting and then updated the CDL Coordinators presentation over night to update everyone who missed the conference calls first thing the next day.

AAMVA held CDL Coordinators meeting on December 4, 2004. AAMVA developed detailed presentations and holds open forums so states can ask questions. AAMVA invited TSA and the newly appointed TSA Agent to present. The TSA Agent presented their solution to the group.

AAMVA reminded the community that it takes at least 2 months to develop the specifications once the requirements are fully defined and up to 6 weeks for the review process to be completed. Once specifications are developed, they are sent to the AAMVA community. The community provides feedback to AAMVA on how long it will take to implement the changes. Detailed project plans are developed. AAMVA can't start programming, update the UNI software or develop acceptance and structured test plans until specifications have been finalized and frozen. AAMVA asked the states if they thought they would meet the January 31, 2005 deadline. At least half of those present said they would not be in compliance on January 31, 2005.

AAMVA's WG developed a Draft National Application Form and 60-day Notification Letter. Both deliverables were posted to AAMVA's Web site. The community is notified.

State declarations are due to TSA on December 27, 2004. States must choose between collecting the fingerprints, fees and application data themselves and electing to allow a TSA Agent to assume these responsibilities.

January 2005

TSA issues Fee Final Rule on January 13, 2005. The rule established user fees, defined the fee structure and procedures for fee collection. The rule moves the responsibility to notify the driver of a no security threat determination from the states to TSA.

On January 27, 2005, TSA issued Clarification of 49 CFR § 1572.13(g), of the Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement (HME) on Commercial Drivers License (CDL) in response to questions from the states. The states asked TSA to clarify the conditions under which a state may require a driver who is transferring an HME on a CDL from another state, to undergo a new security threat assessment.

Paragraph (g) of section 1572.13 applies when a driver with an HME granted by State A moves to State B and applies to transfer the HME. If State B permits drivers to transfer the HME from State A, then the security threat assessment also transfers without conducting a new security threat assessment. The driver's HME security threat assessment expires on the date it would expire under the laws of State A. State B is responsible for establishing a recordation system that tracks transfer applicants, so that State B and the driver are aware of when the HME security threat assessment expires.

However, if a state decides as a matter of policy that it will not allow a transfer of an HME from State A, paragraph (g) of 1572.13 would not apply. In this case, an HME driver from State A moving to State B would have to obtain a new HME from State B. This would require a new security threat assessment, which would expire according to the laws of State B.

February 2005

After FMCSA provided clarification on its immigration and citizenship requirements for the CDL program, AAMVA notified the USA PATRIOT Act WG that it planned to annotate the deliverables impacted with the interpretation. TSA will not allow AAMVA to modify the deliverables, even as a cover page, so AAMVA is forced to remove the Draft National Application Form and 60-day Notification Letter from its Web site. AAMVA cannot knowingly produce documentation that would put the states out of compliance with the CDL program.

AAMVA released the draft CDLIS Threat Determination Specification to the USA PATRIOT Act Working Group, FMCSA and TSA on February 23, 2005. Feedback is due by March 4, 2004. AAMVA continued to develop the draft CDLIS State to State Status, History and Change State of Record Specification. Work began on the Apply for Security Threat Assessment Specification.

TSA started discussions of adding new data elements to the application form.

The Systems Analysts (SA) created detailed project plans for the specification development months earlier. The SA updated the project plan to include the review cycle dates based on the dates the draft documents were released to the WG. However, the rest of the AAMVA team needed the specification deliverables to begin their impact analysis and project planning.

The CDLIS Central Site programmers began an impact analysis and draft a project plan to meet the requirements. The Quality Assurance team started an impact analysis and project plan to project the time it will take to develop the test plans and test each state.

March 2005

On March 11, 2005, AAMVA incorporated feedback received from the states into an updated draft of the CDLIS Threat Determination Specification and re-released it to the USA PATRIOT Act Working

Group. AAMVA has not yet received feedback from TSA on the deliverable. Feedback requested by March 18, 2004. FMCSA signs off on the revised document March 17, 2004. TSA missed deadline for a second time.

The first completely integrated (across all AAMVA project areas) project plan was developed. It is clear to AAMVA that it will take months for all parties to be ready in the production environment. AAMVA spent a week working with the plan to get it as accurate and complete as possible.

On March 18, 2005, AAMVA requested that TSA provide a date when they can complete their review of the CDLIS Threat Determination Specification. AAMVA offered to come to TSA's offices to walk-through the specification. TSA replied their review will be completed on March 27, 2004. TSA does not complete the review of the CDLIS Threat Determination Specification as requested. AAMVA sent follow-up email to TSA on March 27, 2005 to determine when the review will be complete. TSA replied their review will be completed on April 4, 2004.

AAMVA released draft CDLIS State to State Status, History and Change State of Record Specification to the USA PATRIOT Act Working Group, FMCSA and TSA on March 23, 2005. Feedback was due March 29, 2005.

AAMVA scheduled a meeting with Administrator Stone for March 24, 2005. For a full business week prior to the meeting, AAMVA made daily calls to our contacts requesting a discussion of the July date. On March 23, 2005 after 5 days of unreturned messages, AAMVA's call is returned. TSA admitted that it has not even looked at the specifications that were released on February 23, 2005, a month ago. They admitted that they realize no one will make the July date, they are thinking it will be at least six months later than that.

AAMVA met with Administrator Stone on March 24, 2005 to discuss the July 2005 deadline. AAMVA staff predicted that the schedule for completing all of the CDLIS work (programming, testing and implementing the three major CDLIS requirements) for all of the states goes at least into July 2007. Additional resources could move that schedule up one year.

AAMVA reminded TSA that it has always said that it takes at least 2 months to develop the specifications once the requirements are fully defined and up to 6 weeks for the review process to be completed. Once specifications are developed, they are sent to the AAMVA community. The community provides feedback to AAMVA on how long it will take to implement the changes. Detailed

project plans are developed. AAMVA can't start programming, update the UNI software or develop acceptance and structured test plans until specifications have been finalized and frozen. Based on AAMVA's experience implementing changes to CDLIS, we told TSA that there are always some states that can't make the implementation date.

TSA acknowledged that they must provide feedback on the specifications and freeze them so that we can move forward. They indicated they would be looking at alternatives for the July deadline and that they would get back to us on our requests.

TSA's new CIO came to AAMVA's offices on March 31, 2005 to better understand our environment. AAMVA asked if we should continue to work on the specifications or if we should stop work. We explained that we had put significant resources into the effort and if TSA was going to bypass CDLIS entirely, we should stop work on the specification now rather than continue to expend resources. He indicated we should continue.

April 2005

On April 4, 2005, TSA provided review of CDLIS Threat Determination Specification as expected. They also provide partial review of the CDLIS State to State Status, History and Change State of Record Specification. Specifications are pending legal review. AAMVA requested a meeting to discuss the feedback, which was held on April 8, 2005. Legal review was not completed as of April 22, 2004.

AAMVA and TSA talked on April 4, 2005. AAMVA offered TSA an alternative method to implement the Apply for Threat Assessment process. We could still use AMIE and the CDLIS application ID, but the transmission would be directly from the state to TSA, bypassing the CDLIS central site. This would eliminate the need to modify the CDLIS central site and significantly reduce the implementation timeframe. If TSA would approve the design AAMVA could get the specification out within 2 days of the approval. We discussed the option at the USA PATRIOT Act WG meeting on April 6, 2005. AAMVA sent TSA 2 diagrams to help them understand the options. As of April 22, TSA has not commented on the design options presented.

On April 14, 2005 TSA told AAMVA that July was not a regulatory date so TSA couldn't hold AAMVA to it. There were no funds for AAMVA and TSA was continuing to look at alternatives to meet the July date. AAMVA asked if we should continue with the specification development and TSA said yes.

On April 18, 2005 AAMVA was informed of the following:

- TSA is considering using the interim method for the permanent solution, bypassing CDLIS
- Admiral Stone expects TSA to make the July date. TSA plans to implement a web-based solution that the states can use to enter application data. States may also use an FTP method. According to TSA, states will make the July deadline using these methods. TSA may decide that this method will be the permanent solution. CDLIS would not be used to transmit the data. [During subsequent calls to states AAMVA asked then if they would make the deadline of July with the interim procedures, several said no.]
- The same methods may be used to transmit the Threat Determination data. That may also become a permanent solution.
- Despite discussing the new option for the Apply for Threat Assessment process during several calls, TSA indicated that they did not understand what AAMVA had meant and had not in fact even opened the documents AAMVA sent them the week before.
- AAMVA told TSA that it needs to know immediately whether or not TSA plans to use these interim methods for the long-term solution. We met with them on March 24, 2005. That was 4 weeks ago and AAMVA did not receive a reply. AAMVA cannot continue to work through issues on specifications that TSA may decide not to use at all.

During the April 20, 2005 USA PATRIOT Act WG conference call, TSA said they had not made a decision on the use of CDLIS. When asked when a decision would be forthcoming, TSA could not provide an answer.

May 9, 2005